

**TITLE 16**  
**BUREAU OF AUTOMOTIVE REPAIR**

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING  
CONCERNING**

**Repair Assistance Co-Payment Modification**

**NOTICE IS HEREBY GIVEN** that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

**CENTRAL CALIFORNIA**

Monday, November 28, 2011 at 11:00am  
BAR Field Office  
4152 West Swift Ave., Suite 104  
Fresno, CA 93722

**SOUTHERN CALIFORNIA**

Tuesday, November 29, 2011 at 11:00am  
BAR Field Office  
16735 Von Karman Ave., Suite 100  
Irvine, CA 92606

**NORTHERN CALIFORNIA**

Wednesday, November 30, 2011 at 11:00am  
Contractors State Licensing Board  
9821 Business Park Drive  
Sacramento, CA 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on Wednesday, November 30, 2011**, or must be received by the Bureau at one of the above referenced hearings. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

## **AUTHORITY AND REFERENCE:**

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.3, 44001.5, 44002, 44005, 44010.5, 44011, 44012, 44014.2, 44014.7, 44015, 44017, 44037.1, 44062.1, 44091, 44092, 44093, 44094, 44095, 44125, and 44126 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1, Division 33, Title 16, California Code of Regulations and Article 10 of Chapter 1, Division 33, Title 16, California Code of Regulations.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **INTRODUCTION:**

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs (DCA), is the state agency charged with administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources by identifying for repair or retirement vehicles that exceed specific emissions standards. A consumer who chooses to keep a vehicle that has failed its inspection must have it repaired in order to complete the vehicle registration renewal process.

In order to help consumers comply with the provisions of the Program, BAR is charged with administering Consumer Assistance Program (CAP). Through CAP, a consumer can retire a qualified vehicle at any time and for any reason for either \$1,000 or \$1,500 if they meet income eligibility requirements. If a consumer who meets CAP's income requirements chooses to repair a vehicle after it fails a biennial Smog Check inspection, they can receive up to \$500 toward emissions-related repairs.

### **BACKGROUND:**

Health and Safety Code (H&S) section 44062.1(e) requires BAR to establish a co-payment for consumers participating in the Repair Assistance (RA) option of the CAP. Since 2000, the co-payment for low-income consumers has been set at \$20.

Existing law requires BAR to have two protocols for testing vehicles in the state depending on a particular region's ability to meet air quality standards. In areas of the state with better air quality, vehicles are subject to a Two Speed Idle (TSI) test. In non-attainment areas of the state, vehicles are subject to a more rigorous Acceleration Simulation Mode (ASM) test. When a vehicle fails a biennial Smog Check inspection, CAP policy allows Gold Shield stations to charge BAR a maximum of 1.8 labor hours for a TSI and 2.3 labor hours for an ASM test and diagnosis of emissions-related failures for CAP-approved vehicles.

### **Testing and Diagnosis**

BAR has determined that the policy of allowing stations to be reimbursed for testing and diagnosis of CAP vehicles through fixed labor hours does not currently reflect industry practice. BAR conducted a survey of Gold Shield stations in July 2010 to determine the cost of what a

station might charge a consumer for testing and diagnostic services. The survey found that Gold Shield stations charge non-CAP consumers less than CAP consumers for testing and diagnostic service. Despite this additional cost, a study by BAR concluded that the emissions-related repairs performed by Gold Shield stations results in only slightly greater emissions reductions than those performed by regular Test-and-Repair stations for comparable CAP and non-CAP vehicles.

The disparity between what BAR pays for CAP vehicles and non-CAP repairs necessitates a change to the consumer co-payment. BAR proposes to modify the current \$20 consumer co-payment to the cost of testing and diagnosing the emissions-related failure. This change would allow BAR to better utilize the CAP budget as resources would be spent on actual repairs, while consumers could individually negotiate a better price for diagnosing and testing their vehicle.

#### Crediting of Consumer Co-payment

Currently, consumers may request a credit toward the \$20 co-payment for any expenses incurred for emissions-related repairs performed by a station prior to qualifying for CAP. BAR proposes to discontinue the optional crediting of emissions-related repairs since the consumer will be responsible for bearing the full cost of the testing and diagnosis, which will now constitute the statutorily mandated co-payment. This proposed change effectively eliminates the need for this option.

#### Income-Eligible Consumers

This proposed regulation also allows consumers to self-certify their income in order to qualify for CAP. To ensure appropriate controls, BAR will periodically and randomly require a consumer to provide income verification documents prior to receiving approval to participate in CAP. If BAR determines that a consumer has submitted false information, they will not be allowed to participate in CAP in the future.

#### Income Eligibility Table

The income eligibility table included on the CAP application will be revised to reflect the maximum gross household income amounts based on the recently revised 2011 Federal Poverty Level published by the U.S. Department of Health and Human Services (DHHS) (*Federal Register* Vol. 76, No.13, Thursday, January 20, 2011, pp. 3637 - 3638). Pursuant to section 3394.4(a)(3)(A), income eligibility for CAP is based on the most current Federal Poverty Level. The income eligibility table is included in the CAP application to assist applicants in determining their eligibility. As mandated by statute, BAR is required to update its regulations, specifically the CAP application income-eligibility table, to correspond with the most current Federal Poverty Level.

#### **EFFECT OF REGULATORY ACTION:**

The Bureau of Automotive Repair (BAR) is proposing the following amendments to existing regulations:

- I. Modify the RA consumer co-payment. This update will remove the current \$20 co-payment and instead will require the consumer co-payment to be the total cost of testing and diagnosing the Smog Check failure. (§ 3394.4)
- II. Remove the optional crediting of emissions-related repairs toward the consumer co-payment. (§ 3394.6)
- III. Amend the CAP application to reflect the consumer co-payment modification and updates to the Federal Poverty Level as mandated by statute. (§§ 3394.6 and 3394.7)
- IV. Modify eligibility requirements to require consumers to self-certify their income and to provide verification of income upon request of the Bureau. (§ 3394.6)

The proposed action will make the following changes to existing regulation:

1. Amend Section 3394.3 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. Remove from subparagraph (b) “diagnostic and” and “Once the station has initiated any diagnostic or repair work on the vehicle, the owner’s eligibility status or associated co-payment as specified in section 3394.4 shall not change.”
2. Amend Section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. Remove from subparagraph (B) of subsection (a) (3) “Spend a minimum co-payment of twenty dollars (\$20) on emissions-related repairs at a licensed smog check test-and-repair station” and remove “Money spent to correct tampered emissions control systems or to make a vehicle testable shall not be included in the co-payment.” Add “The consumer shall pay the total cost of testing and diagnosing the emissions-related failure as a co-payment for receiving Repair Assistance.”

This edit modifies the co-payment requirement. Currently, a consumer is responsible for making a \$20 co-payment before receiving the \$500 CAP repair benefit. Under this modification, the consumer will be responsible for all testing and diagnosis fees in lieu of the \$20 co-payment. This modification will address the large proportion of the \$500 CAP benefit consumed on testing and diagnosing a vehicle by Gold Shield stations based on existing CAP policy. This change will also help to encourage consumers to comparison shop and possibly negotiate a better price from the station for the testing and diagnosis of their vehicle. It will also help to encourage stations to compete on price for business from CAP consumers. The budget savings resulting from this change would help BAR meet projected demand for CAP, which will exceed estimated revenues.

3. Amend Section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. In subsection (a), replace the current CAP application form (11/10) with form (08/11).
  - b. In subsection (b) remove “The application must,” “include,” and “copies.” Add “To qualify based on income level, the applicant must certify under penalty of perjury that he or she has a household income that is less than or equal to two hundred twenty-five percent (225%) of the federal poverty level, as published quarterly in the Federal Register by the United States Department of Health and Human Services.” Add “The bureau may require the applicant to,” “provide a copy,” and “one of.”
  - c. In subsection (b) (1) remove “Under the Repair Assistance option, copies of any invoices for emissions-related repairs performed prior to applying to the Consumer Assistance Program, for the sole purpose of crediting the consumer co-payment required under section 3394.4.”

This modification deletes a reference that permits a CAP consumer to request BAR to credit toward the \$20 co-payment any emissions-related work performed on the vehicle prior to its acceptance into CAP. Since the consumer is no longer subject to a \$20 co-payment in order to receive the \$500 CAP benefit and will now be responsible for paying all testing and diagnostics fees, there is no longer a need for this section.
  - d. In subsection (b) (2) remove “If applying based on income level, an applicant must provide any one of the following documents.” This change renumbers (b) (2) (A) to (b) (1).
  - e. Make other minor grammatical, editorial, and numerical changes.
  - f. Add subsection (c) which states, “A consumer who submits false information or fails to provide verification of income, as requested by the bureau, cannot receive future assistance under the Consumer Assistance Program.”
4. Amend Section 3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. Remove “08\_022 CAP/APP (11/10), which is hereby incorporated by reference” and add “as prescribed in section 3394.6.”

#### Incorporation by Reference

The incorporation by reference in sections 3394.6 and 3394.7 of the CAP application form (08\_022 CAP/APP (08/11)) is appropriate since publishing this document in the California Code

of Regulations would be cumbersome, unduly expensive, impractical and unnecessary. This revision reflects the correct version of the application that includes the modified consumer co-payment. The revised application will be incorporated by reference, replacing the version dated 11/10. If anyone should wish to examine the revised application, it is always available upon request from BAR. The revised application will also be available for review throughout this rulemaking process and will be available on BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).

### **FISCAL IMPACT ESTIMATES**

#### **FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:**

No cost or savings to state agencies and in federal funding to the state.

This proposed regulatory action is cost neutral. Any savings generated by BAR requiring consumers participating in RA to contribute the testing and diagnosis as the co-payment would be fully expended on repairing additional vehicles because demand for the program is greater than the appropriation authority.

#### **NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:**

None.

#### **LOCAL MANDATE:**

None.

#### **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:**

None.

#### **BUSINESS IMPACT:**

BAR has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Since BAR will no longer pay for the testing and diagnosis of emissions-related failures, Gold Shield stations may lose approximately \$3,048,101 in testing and diagnostic revenue annually. This change is warranted because Gold Shield stations currently charge CAP consumers what is authorized by BAR policy rather than what the marketplace dictates. This often means that a larger percentage of CAP repairs are consumed by testing and diagnostic fees compared to non-CAP consumers. The proposed regulation addresses this disparity and results in Gold Shield stations charging CAP consumers market price for these services.

### **IMPACT ON JOBS/NEW BUSINESSES:**

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

In FY 2009-10 the average state contribution for CAP repairs was \$413. Based on current appropriation BAR can assist approximately 28,535 consumers on an annual basis. It is estimated that 16,265 (57 percent) repairs cost less than \$500; these consumers would be required to contribute higher testing and diagnostic fees. The remaining 12,270 consumers are projected to have repairs exceeding \$500 and would benefit from a reduction in overall costs. Of the 12,270 consumers, 11,104 would participate based on their vehicle failing an ASM test and another 1,166 from a failed TSI test. All consumers participating in RA would realize savings of \$20 each due to the elimination of the mandatory co-payment. Changes to RA policy allow BAR to assist an additional 7,959 consumers repair their vehicle at an average repair cost of \$413.

Overall, individuals would realize annual savings of \$3,672,227 or \$36.72 million over the lifetime of this regulation.

### **EFFECT ON HOUSING COSTS:**

None.

### **EFFECT ON SMALL BUSINESS:**

BAR has determined that the proposed regulations would affect small businesses.

### **CONSIDERATION OF ALTERNATIVES**

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

## **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

## **AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

## **CONTACT PERSON**

**Inquiries or comments concerning the proposed administrative action may be addressed to:**

Steven Hall  
Bureau of Automotive Repair  
10240 Systems Parkway  
Sacramento, CA 95827  
Telephone: (916) 255-2135  
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**The backup contact person is:**

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## **WEB SITE ACCESS**

Materials regarding this proposal can also be found on the BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).